

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

EVDOKIA NIKOLOVA) Docket No. A 19-CA-877 RP
)
vs.) Austin, Texas
)
UNIVERSITY OF TEXAS)
AT AUSTIN) March 10, 2022

TRANSCRIPT OF TRIAL TESTIMONY OF DONALD DEERE
BEFORE THE HONORABLE ROBERT L. PITMAN

APPEARANCES:

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Proceedings reported by computerized stenography,
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DEFENDANT'S
EXHIBIT

A

1 THE COURT: Mr. Dower.

00:00:01 2 MR. DOWER: Yes, your Honor. Defendant
00:00:19 3 calls Donald Deere.

00:00:43 4 THE COURT: Good afternoon, sir. Before
00:00:45 5 taking a seat, if I could get you to raise your right
00:00:47 6 hand to be sworn.

00:00:48 7 THE CLERK: You do solemnly swear or affirm
00:00:48 8 that the testimony which you may give in the case now
00:00:48 9 before the Court shall be the truth, the whole truth,
00:00:54 10 and nothing but the truth?

00:00:54 11 THE WITNESS: I do.

00:00:55 12 THE COURT: Feel free to take off your mask
00:00:57 13 if you're comfortable doing so.

00:01:02 14 DONALD DEERE, called by the Defendant, duly sworn.

00:01:02 15 DIRECT EXAMINATION

00:01:02 16 BY MR. DOWER:

00:01:04 17 Q. Good afternoon, Dr. Deere.

00:01:08 18 A. Good afternoon.

00:01:11 19 Q. Can you start out by introducing yourself to the
00:01:13 20 jury, please?

00:01:14 21 A. Sure. My name is Donald Deere. I have a Ph.D.
00:01:18 22 in Economics from Massachusetts Institute of Technology.
00:01:22 23 I was on the faculty at Texas A & M University in
00:01:25 24 economics for 24 years, the last 17 with tenure. I
00:01:29 25 retired from that and I now do economic consulting on a

00:01:33 1 full or sometimes part-time basis.

00:01:35 2 Q. And were you retained in this case on behalf of
00:01:43 3 U.T. Austin?

00:01:43 4 A. I was.

00:01:44 5 Q. And to do what?

00:01:45 6 A. To respond to the reports of both Dr. Thompson
00:01:50 7 and Dr. Glass, and to provide my own assessment of the
00:01:54 8 statistical issues involved -- involving the claims of
00:01:59 9 Dr. Nikolova with regard to tenure and, also, to provide
00:02:02 10 my own assessment of the damages if it were the case
00:02:07 11 that the jury found for Dr. Nikolova.

00:02:10 12 Q. And do you believe that your professional
00:02:13 13 experience and background in economics and statistics
00:02:17 14 equip you to make those opinions?

00:02:19 15 A. I do.

00:02:19 16 Q. At this point, we would tender Dr. Thompson as an
00:02:24 17 expert in labor economics and statistics.

00:02:27 18 MR. NOTZON: He can't because that's Dr.
00:02:29 19 Deere.

00:02:30 20 MR. DOWER: I'm sorry. What did I --

00:02:31 21 THE COURT: Dr. Thompson.

00:02:33 22 MR. DOWER: I'm sorry.

00:02:34 23 MR. NOTZON: No objection.

00:02:36 24 MR. DOWER: I'm living in the past
00:02:37 25 obviously.

00:02:38 1 THE WITNESS: It's okay.

00:02:39 2 Q. (BY MR. DOWER) So sorry, Dr. Deere. All right.
00:02:42 3 Well, with that, I want to pick up where we left off,
00:02:48 4 which was talking about -- well, where we left off.
00:02:53 5 Where we left off with Dr. Glass when we were talking
00:02:57 6 about that his scenario one. And his -- what is his
00:03:05 7 scenario one -- I'll bring it up just a moment. What is
00:03:46 8 his scenario one based on?

00:03:48 9 A. Well, his scenario one is -- assumes that given
00:03:54 10 Dr. Nikolova did not receive tenure in 2019 that she
00:03:58 11 would, instead, receive tenure in 2023. And he
00:04:02 12 calculates the -- essentially the difference in earnings
00:04:05 13 between those two scenarios: One, she was tenured in
00:04:11 14 '19 and continued on. The other, she would be not
00:04:15 15 tenured in '19 but tenured in 2023 and continue on. And
00:04:19 16 I believe this scenario one is to the age of about 65,
00:04:24 17 her expected work life based on the sources that Dr.
00:04:28 18 Glass cited.

00:04:30 19 Q. And I'm going -- or what assumption -- and you
00:04:34 20 heard him testify here today, correct?

00:04:36 21 A. Yes.

00:04:37 22 Q. What assumption did he make about her salary
00:04:41 23 after she is granted tenure on September 1st, 2023?

00:04:47 24 A. Well, he essentially assumes that salaries would
00:04:50 25 be like an escalator. You know, you're -- tenure's

00:04:54 1 delayed two or three years, so you're on a step two or
00:04:58 2 three below. And then, from then on, you're just always
00:05:01 3 below. And so, that's -- in a nutshell, I'd say that's
00:05:07 4 his assumption.

00:05:08 5 Q. I'm going to show you Defendant's Exhibit 62.
00:05:15 6 This is data for salary in the Cockrell School of
00:05:20 7 Engineering going back as far as back as 2009 to 2010.
00:05:26 8 Do you see this?

00:05:26 9 A. I do. Sort of.

00:05:28 10 Q. All right. Let me zoom in a little bit.

00:05:30 11 A. There you go. That's a little better.

00:05:32 12 Q. So what are in the -- is in the left-hand column?

00:05:40 13 A. The names of faculty is in column A.

00:05:43 14 Q. And the column B?

00:05:48 15 A. That's their -- it says faculty rank, but that's,
00:05:51 16 you know, professor, assistant professor, associate
00:05:53 17 professor as of the end of the academic year spring
00:05:56 18 2019.

00:05:57 19 Q. And then, column C?

00:06:00 20 A. The date that their Ph.D. was awarded.

00:06:03 21 Q. Column D?

00:06:04 22 A. The year since.

00:06:05 23 Q. Okay. And this skips ahead for ease of reference
00:06:11 24 but -- and then, what are columns -- I guess, just
00:06:15 25 column O and then on?

00:06:16 1 A. Those are salaries for those particular
00:06:19 2 individual faculty members for those particular academic
00:06:23 3 years.

00:06:23 4 Q. And do you see that the numbers are color-coded?
00:06:27 5 We've got red, we've got green and we've got black?

00:06:31 6 A. Yes. I see that.

00:06:32 7 Q. Okay. So I'm going to cut to the chase and do
00:06:37 8 you see this -- it's called a legend that tells us what
00:06:41 9 the color-coding means?

00:06:42 10 A. Yes.

00:06:42 11 Q. Okay. And so, can you just explain or put on the
00:06:47 12 record what the different colors mean?

00:06:49 13 A. So the font that would be black would be
00:06:52 14 someone's salary while they're an assistant professor.
00:06:55 15 The font green would be -- faculty member's salary while
00:06:59 16 that person was an associate professor. Red would be
00:07:01 17 the font for the salary while that person was a
00:07:03 18 professor. And purple would be the font while that
00:07:07 19 person was both a professor and a chair of their
00:07:10 20 department.

00:07:12 21 Q. And so, for example, if we were to look at
00:07:19 22 someone -- let's do one of the more recent ones like Dr.
00:07:31 23 Ranjuit Gharpurey. And I apologize if I'm messing that
00:07:33 24 up. Do you see that that doctor went from green to red
00:07:42 25 between academic years 2013 to '14 and then, academic

00:07:45 1 years '14 to '15?

00:07:47 2 A. Yes.

00:07:47 3 Q. And so, what does that signify to you?

00:07:50 4 A. Could you go back down to the bottom? I read it.

00:07:54 5 Yeah, that green to red is associate professor to

00:07:58 6 professor.

00:07:59 7 Q. Okay. And so, just to take an example, so then

00:08:06 8 what would -- I'm going to call him Dr. G just to avoid

00:08:17 9 me butchering his name. What would it signify to go

00:08:20 10 from green to red between these two salaries?

00:08:23 11 A. To be promoted from associate professor to full

00:08:26 12 professor.

00:08:26 13 Q. Okay.

00:08:27 14 A. Or to professor.

00:08:28 15 Q. And if we go down a couple cells, we see Dr.

00:08:34 16 Garg. Do you see that?

00:08:36 17 A. Yes.

00:08:36 18 Q. And what is his salary in 2014 to '15?

00:08:41 19 A. \$128,479.

00:08:44 20 Q. And then -- and how long had he been a full

00:08:50 21 professor to the extent we can tell?

00:08:53 22 A. At least, what, five, six -- he's in at least his

00:08:56 23 sixth year because he's got red font all the way back to

00:08:59 24 the first year of visible.

00:09:01 25 Q. And so, it could be even farther back than that.

00:09:04 1 A. Yes.

00:09:04 2 Q. Okay. And so, he's making roughly \$28,000 -- or,
00:09:11 3 excuse me, \$128,000 in 2014-'15, correct?

00:09:17 4 A. Yes. 128,479 to be exact.

00:09:21 5 Q. Okay. And then, Dr. G is -- he is promoted to a
00:09:30 6 full professor as of that year for the first time,
00:09:33 7 correct?

00:09:35 8 A. Yes. Appears that way.

00:09:37 9 Q. Yes. And what is his salary?

00:09:39 10 A. 128,370.

00:09:43 11 Q. And so, what is the difference between these two
00:09:46 12 roughly?

00:09:48 13 A. \$109.

00:09:50 14 Q. Out of -- and so, that's -- what would you put
00:09:52 15 that just roughly in percentage terms?

00:09:55 16 A. One-tenth of one percent.

00:09:57 17 Q. Okay. And so, from this -- so from this specific
00:10:01 18 example, and we can look at some others, how does that
00:10:04 19 work -- how does that fit with the escalator that he
00:10:09 20 were on?

00:10:10 21 A. That suggested that you can jump up steps. As
00:10:15 22 you said, Professor G on row 34 is promoted years later
00:10:21 23 than Professor Garg on row 36, but in 2014-15, the year
00:10:26 24 that the first Professor G is promoted, they're making
00:10:30 25 virtually the identical salaries.

00:10:32 1 Q. Let's look at some associate professors. So, for
00:10:37 2 example, so Nan Sun goes from black to green between the
00:10:48 3 years 2016-'17 to '17-'18, correct?

00:10:51 4 A. Yes.

00:10:51 5 Q. And so, remind us, what does that signify?

00:10:55 6 A. That's the promotion from assistant professor to
00:10:57 7 associate professor, and I would almost be certain
00:11:01 8 that's also with tenure.

00:11:02 9 Q. And so, what are those -- what jump was
00:11:07 10 associated with that?

00:11:08 11 A. Well, it's an almost \$11,000 jump, around 10
00:11:13 12 percent.

00:11:13 13 Q. Okay. And so, that puts Dr. Sun at 119K more or
00:11:22 14 less.

00:11:22 15 A. 119,240. Yes.

00:11:26 16 Q. Thank you. And so -- and that's actually more
00:11:28 17 than some of the other assistant -- or that's actually
00:11:33 18 more than some of the other associate professors,
00:11:35 19 correct?

00:11:36 20 A. Yes. On rows -- the one you highlighted are 65,
00:11:41 21 row 66, row 67, those three individuals were promoted a
00:11:46 22 few years earlier, and they're making less in 2017-'18
00:11:50 23 than is Dr. Sun.

00:11:53 24 Q. And I don't want to be accused of cherry-picking.
00:11:56 25 So is there another example that we could look at right

00:12:01 1 now that similarly emphasizes this point?

00:12:05 2 A. Well, you happen to have highlighted row 61.

00:12:10 3 Yes. Dr. Dimakis is promoted effective '15-'16, goes
00:12:16 4 from 101,0 50 to 112,100. And that 112,000 is virtually
00:12:23 5 identical to the several green rows below it for people
00:12:26 6 who were promoted one or more years earlier.

00:12:31 7 Q. And so, looking at these examples, and I think
00:12:34 8 there's still others but I won't belabor the point, were
00:12:38 9 you in the courtroom when I used my rather clumsy
00:12:41 10 helicopter analogy?

00:12:43 11 A. I was.

00:12:43 12 Q. Okay. So what did you understand that analogy to
00:12:46 13 mean?

00:12:46 14 A. Well, I think you were suggesting that this is --
00:12:49 15 what you see here is possible. In other words, that
00:12:53 16 it's not like you -- your promotion comes two years
00:12:56 17 later, so you're forever behind the people who were
00:12:59 18 promoted two years before. This suggests that you're
00:13:03 19 promoted two years later and you're paid virtually
00:13:06 20 identically to the people who were promoted one or two
00:13:09 21 or three years earlier.

00:13:10 22 Q. So was Dr. Glass' assumption about how U.T.
00:13:15 23 structures their promotions correct based on this
00:13:19 24 empirical data?

00:13:21 25 A. Well, this certainly is a counterexample

00:13:24 1 inconsistent with that assumption, I would say.

00:13:26 2 Q. And this is specific to the -- these are Cockrell
00:13:31 3 School of Engineering professors, correct?

00:13:32 4 A. Faculty, yeah. These are actually assistant to
00:13:35 5 associate, but yes.

00:13:36 6 Q. Let's take a step back, then, and talk about Dr.
00:13:44 7 Thompson and we'll come back to Dr. Glass. So talking,
00:13:52 8 then, about Dr. Thompson, I'm going to show you the
00:13:58 9 reports or the charts that he had and then, we can talk
00:14:01 10 about them. So I'm showing you Plaintiff's Exhibit 237.

00:14:08 11 Were you in the courtroom when Dr. Thompson
00:14:10 12 testified?

00:14:11 13 A. I was.

00:14:13 14 Q. Could you tell us, what does his table 1 reflect?

00:14:22 15 A. His table 1 is a comparison of the percentage of
00:14:32 16 female assistant professors who are reviewed early for
00:14:33 17 tenure compared to the percentage to male assistant
00:14:36 18 professors who were reviewed early for tenure.

00:14:39 19 Q. Do you agree that this testimony has bearing on
00:14:43 20 Dr. Nikolova's case?

00:14:45 21 A. No.

00:14:46 22 Q. Well, why not?

00:14:47 23 A. Well, this table, and as Dr. Thompson testified,
00:14:51 24 shows that to the percentage of women who went up early
00:14:55 25 is noticeably lower, statistically significantly lower

00:14:58 1 than the percentage of men who were put up early. But
00:15:02 2 Dr. Nikolova went up early so, you know, her -- nothing
00:15:08 3 prevented her from going up early. So the fact that
00:15:10 4 this is showing that at least some women went up -- were
00:15:14 5 less likely to go up early, it doesn't seem to apply to
00:15:16 6 her.

00:15:22 7 Q. Let's move on then to tables 2 and 3. Again,
00:15:28 8 these are not your tables. These are Dr. Thompson's
00:15:30 9 tables. What do you recall of his testimony about these
00:15:36 10 two tables?

00:15:38 11 A. Well, table 2 was -- again, these are votes of
00:15:42 12 the departmental, what's called the budget committee or
00:15:47 13 -- I'm not sure the C stands for committee, but the
00:15:50 14 budget group, the people in the department -- the other
00:15:53 15 faculty in the department who were making a -- reviewing
00:15:55 16 and making a recommendation, a vote whether to -- in
00:15:58 17 favor of tenure or not. And, you know, this shows that
00:16:02 18 those who receive a heavy, very high fraction of the
00:16:06 19 vote are quite likely to get tenure, and those who
00:16:09 20 receive lower fraction of the vote don't get tenure. Or
00:16:13 21 flipping it around, the ones who don't get tenure didn't
00:16:16 22 get as many votes as the ones who do get tenure.

00:16:18 23 Q. In your opinion, does this testimony and this
00:16:22 24 data have any bearing on the question of whether U.T.
00:16:25 25 Austin discriminated against Dr. Nikolova on the basis

00:16:27 1 of pregnancy or sex?

00:16:28 2 A. No, because this table, there's nothing on here
00:16:32 3 about gender, or sex, or pregnancy. It's just -- it's
00:16:38 4 about the votes and whether you get -- whether
00:16:42 5 promotions are denied or made.

00:16:45 6 Q. And so, looking at this, can we infer anything
00:16:50 7 about why U.T. Austin did not grant early tenure to Dr.
00:16:54 8 Nikolova in 2019?

00:16:56 9 A. I don't think so.

00:16:57 10 Q. And do you know whether women are included in
00:17:01 11 this data?

00:17:02 12 A. They are. In fact, in table 3, those 62 that got
00:17:07 13 100 percent vote, again, this is from the college
00:17:09 14 committee, and again, 100 percent of those were given
00:17:14 15 tenure. This is, again, before Dr. Nikolova's case, 16
00:17:20 16 of those 62 are women. So there's plenty of women in
00:17:22 17 those data who are 100 percent vote and also get tenure.

00:17:28 18 Q. Well, I should take a step back. Did you review
00:17:32 19 the same data that Dr. Thompson reviewed in forming
00:17:37 20 these opinions?

00:17:37 21 A. Yes.

00:17:38 22 Q. Okay. And so, when you say, you know, that the
00:17:41 23 women were included in that 13, what is that based on?

00:17:47 24 A. I didn't say the 13. I said the 62.

00:17:49 25 Q. Excuse me. The 62. I apologize.

00:17:51 1 A. Sixteen of the 62 are women. The 13, I'm not --
00:17:55 2 I don't recall the gender breakdown there, but the
00:17:57 3 relevant point, I think, is because, you know, Dr.
00:18:02 4 Thompson pointed out that before you know Dr. Nikolova's
00:18:05 5 case, 62 out of 62 who got 100 percent vote got tenure.
00:18:09 6 You know, he likened it to the sun coming up in the
00:18:12 7 morning.

00:18:13 8 Q. Do you agree with that?

00:18:13 9 A. Well, 62 out of 62 is 100 percent. I'll give you
00:18:17 10 that. But there's a lot of women in there. So I
00:18:21 11 understand Dr. Nikolova, disappointed and shocked that
00:18:26 12 she didn't get tenure, but this doesn't suggest that it
00:18:28 13 was -- gender was the cause.

00:18:29 14 Q. Well, let's talk about the data that you looked
00:18:32 15 at and your statistics. So I want to move on from Dr.
00:18:36 16 Thompson's tables unless there's anything you'd like to
00:18:39 17 add about this before I move on.

00:18:42 18 A. No, sir.

00:18:43 19 Q. Okay.

00:18:43 20 A. You're driving.

00:18:46 21 Q. Let's go, then, to your data. So first of all,
00:19:12 22 did you generate table two of Defendant's Exhibit 50?

00:19:16 23 A. Yes, I did.

00:19:16 24 Q. Okay. And so, help us understand. Walk us
00:19:20 25 through what this table reflects.

00:19:23 1 A. Sure. There are three pairs of rows. We'll
00:19:26 2 start with the first two up at the top that say the
00:19:28 3 population there. So that's decisions prior to
00:19:31 4 2018-'19. That was the same group that Dr. Thompson
00:19:36 5 focused on with those 62 votes. Or, you know, the 62,
00:19:41 6 100 percent votes. And what I've done here is one row
00:19:44 7 for women, one row for men. And I've got three sets of
00:19:48 8 columns where I report then a number of people and then,
00:19:53 9 a percentage of what happened to them.

00:19:54 10 So the first set of columns there, department
00:19:57 11 committee recommends for tenure. And so, what I'm
00:20:01 12 looking at there is, given the department recommended
00:20:04 13 for tenure, the normal cases get tenure, so the question
00:20:08 14 is, how often did someone not get tenure despite the
00:20:11 15 fact that their department recommended them for tenure?
00:20:14 16 And so, there were 20 cases there for women that where
00:20:20 17 the department recommended for tenure, and of those, 22
00:20:24 18 women were denied tenure. This is again before Dr.
00:20:27 19 Nikolova's case.

00:20:27 20 Q. How many women were denied tenure?

00:20:29 21 A. Two.

00:20:30 22 Q. Oh, two. Thank you, sir.

00:20:32 23 A. And that two out of 20 is the ten percent you see
00:20:34 24 in the percent denied tenure column.

00:20:36 25 Q. Okay. So 20 went up, two were denied and

00:20:41 1 that's --

00:20:42 2 A. If I may. Twenty were recommended. There were
00:20:45 3 more that went up. There's a footnote there that the
00:20:47 4 department committee recommended nine -- tenure in four
00:20:50 5 cases. All four were denied tenure. Ultimately, those
00:20:54 6 aren't really interesting and don't tell you anything.
00:20:56 7 So these are the ones that tell you something where the
00:20:59 8 final decision differed from what the department
00:21:02 9 recommended.

00:21:02 10 Q. Thank you for correcting me. Okay. And so,
00:21:06 11 then, what about the men for department committee
00:21:10 12 recommends for tenure?

00:21:11 13 A. Right. And the comparison -- there were 63 men,
00:21:13 14 so a little over three times as many that were
00:21:17 15 recommended by the department, and a total of seven of
00:21:20 16 those 63 were ultimately denied tenure. And so, that
00:21:24 17 rate of denial or percentage denied is 11.1 percent and
00:21:28 18 that -- it's slightly bigger than but it's not
00:21:31 19 statistically different from the 10 percent for women.
00:21:34 20 So there's no statistical difference here in the
00:21:38 21 fraction of women and men who are denied tenure amongst
00:21:42 22 those women and men who were recommended for tenure by
00:21:44 23 their department.

00:21:47 24 Q. Okay. So then, let's stick with this row -- or,
00:21:52 25 excuse me, this column for now. So that was for

00:21:55 1 decisions prior to 2018 to '19. And then, next you do
00:21:58 2 it again; this time, all decisions, except for Dr.
00:22:02 3 Nikolova. Why rerun it that way?

00:22:05 4 A. Well, I rerun it with more decisions to take it
00:22:08 5 through all the data we had. And I specifically exclude
00:22:13 6 Dr. Nikolova, who is included in the last row, I'll say,
00:22:15 7 but is out of this row. And the idea is, if something
00:22:23 8 bad happens to you and you say it's because of your
00:22:26 9 gender, well, we know something bad happened to you and
00:22:29 10 we know what your gender is, but the issue of whether
00:22:31 11 the causation is gender, you want to look at other
00:22:35 12 people who share that characteristic with you, all
00:22:38 13 women. And what I've done here is just take Dr.
00:22:41 14 Nikolova out of it to see how does it look for all women
00:22:44 15 but her. And then, I'm going to put her back in so that
00:22:47 16 we look at all women together. But that's sort of the
00:22:50 17 idea to get an idea of, well, what was it like for
00:22:51 18 everyone else with regard to gender.

00:22:52 19 Q. And so, looking at that data, what did you
00:22:55 20 determine?

00:22:57 21 A. It's the same process. You know, there were more
00:22:59 22 who were recommended for tenure. It's exactly the same
00:23:03 23 numbers who were denied, the two and the seven. So the
00:23:06 24 percentages are somewhat lower. Again, the 8.3 percent
00:23:09 25 of the 24 women, excluding Dr. Nikolova, were denied and

00:23:14 1 9.6 percent of the 73 men were denied. And again, the
00:23:18 2 8.3 percent and the 9.6 percent is not statistically
00:23:23 3 different. So there's -- again, that comparison there
00:23:26 4 provides no evidence that gender is related to the
00:23:30 5 tenured decision, given the department's recommendation.

00:23:33 6 Q. When you say not statistically significant or no
00:23:36 7 statistical difference, can you just break that down in
00:23:38 8 sort of common basic English? What does that mean?

00:23:41 9 A. Well, yeah. I mean, if you had -- the easiest
00:23:47 10 thing to think about is flipping a coin, okay? You've
00:23:50 11 got six coins and you're going to flip them, you expect
00:23:53 12 three heads and three tails, but you're not really
00:23:55 13 surprised if you get two heads and four tails or four
00:23:58 14 heads and two tails. And so, there's a little bit of
00:24:01 15 luck involved. And so, when we compare statistics, we
00:24:04 16 want to say, well, you know, I don't want to say they're
00:24:07 17 different if it's just kind of random chance. However,
00:24:10 18 if you flip six coins and all six are heads or all six
00:24:13 19 are tails, that's kind of surprising. That happens, you
00:24:16 20 know, well less than five percent of the time and so --

00:24:19 21 Q. Can you make sure you're speaking into the mic.

00:24:22 22 A. Sure. If you flip it six times and you get all
00:24:27 23 heads or all tails, that's pretty unlikely. And in
00:24:30 24 fact, that's so unlikely, you would -- from based on
00:24:32 25 that evidence, you would say, well, I'm not so sure

00:24:35 1 that's a fair coin, that it really is a 50/50 coin.

00:24:38 2 So that's what we're doing with statistical
00:24:42 3 significance is we say, I look at the process as if it
00:24:45 4 were neutral and with respect to in this case gender.
00:24:47 5 And then, you say, well, how did it come out? Did it
00:24:50 6 come out pretty much even, in which case we go, well,
00:24:53 7 there's no evidence that it was related to gender? Or
00:24:55 8 did it come out that women were treated much, much
00:24:57 9 better or women had much, much better outcomes or much,
00:25:02 10 much worse outcomes, then we would say, well, the
00:25:02 11 evidence suggests there's something going on unrelated
00:25:05 12 to gender. And here, we're on the side of there's
00:25:07 13 really no difference. If anything, it's higher for
00:25:11 14 women, but that's really nothing. That's just again
00:25:13 15 like the two heads and a four tails.

00:25:15 16 So that's what I mean. Is that -- are you
00:25:19 17 good?

00:25:19 18 Q. I liked it. Now, what about if there's only a
00:25:24 19 very, very small -- I don't know whether I'm using the
00:25:27 20 word "population" correctly, but what if you only had,
00:25:30 21 for example, two women that went up in a period of five
00:25:35 22 years because, let's say, we were only looking at one
00:25:38 23 department, and so, there was a very small population of
00:25:41 24 data.

00:25:42 25 A. Sometimes you don't have enough data to be able

00:25:46 1 to say anything. In other words, if you had very, very,
00:25:49 2 very few women to go up for tenure, you really wouldn't
00:25:52 3 be able to say something about women. You could say
00:25:55 4 something about those two women. So it's like with the
00:25:56 5 coins. If you only had two and you flip them both and
00:25:59 6 you happen to get two heads, you're still not that
00:26:01 7 surprised. You just don't have enough coins -- enough
00:26:04 8 flips of that coin to decide whether you think it's fair
00:26:07 9 or not. So you need more information. And so, if you
00:26:12 10 don't have enough information, it can be difficult to
00:26:16 11 find any statistical significance.

00:26:18 12 Q. All right. Let's move on, then, to the last row
00:26:24 13 in this department committee recommends for tenure
00:26:28 14 analysis.

00:26:29 15 A. Sure. And again, this is all decisions, so it's
00:26:32 16 one more decision includes Dr. Nikolova's case. And so,
00:26:35 17 there's, you know, one more woman recommended by the
00:26:37 18 department, and one more woman who is denied tenure
00:26:40 19 ultimately. So the row for women is 25 and with three
00:26:45 20 denied for 12 percent denial rate, compared to the men's
00:26:49 21 row the same as above, 73 men -- 79, 9.6. Now the 12
00:26:54 22 percent is bigger than the 9.6, but it's not
00:26:57 23 statistically different. Again, this is kind of the
00:26:59 24 four heads, two tails kind of case.

00:27:01 25 Q. So then, next you looked at it -- what do the

00:27:07 1 statistics look like if the college committee recommends
00:27:11 2 for tenure. Is that correct?

00:27:12 3 A. Yes. It's a similar kind of idea, but now I
00:27:16 4 looked at it both ways. You'll see the first set -- the
00:27:19 5 middle set of columns there for the college is the
00:27:21 6 college recommends for tenure and then, how often did
00:27:26 7 the university ultimately deny. And then, the other
00:27:31 8 side of that reverse, which is the last -- the last set
00:27:38 9 of columns is the college committee recommends against
00:27:41 10 tenure, but the university granted it, anyway, okay? So
00:27:47 11 both kinds of -- the university doesn't agree with the
00:27:51 12 college. That's the point here. And how does that
00:27:53 13 relate to or how does that compare with gender?

00:27:57 14 And again, it's the same set of comparisons.
00:28:00 15 The first row is going to be prior to Dr. Nikolova's
00:28:03 16 case. The second case is all cases except her. And the
00:28:05 17 last row is including her case. And the pattern in the,
00:28:10 18 you know, the university denied when the college
00:28:12 19 committee recommends for tenure, it's, you know -- let
00:28:17 20 me just do the -- first row is 17 women recommended for,
00:28:21 21 one denied, so that's 5.9 percent. Comparison, 58 men
00:28:26 22 recommended, four denied, 6.9 percent. So again, the
00:28:30 23 5.9 and the 6.9 are not identical, but they're close
00:28:34 24 enough that we say there's no evidence it's -- you know,
00:28:36 25 it's not statistically significant related to gender.

00:28:40 1 When we look at all decisions except Dr.
00:28:43 2 Nikolova, very similar pattern, you know, 5.9 percent
00:28:46 3 denial rate for men, 4.8 percent, a lower denial rate
00:28:50 4 for women, but again, no statistical difference. When
00:28:52 5 we add Dr. Nikolova's case, you know, she's one out of
00:28:54 6 22 women, she is denied. So that raises that percentage
00:28:58 7 a noticeable amount to 9.1 percent, two out of 22 women
00:29:01 8 and for men, four out of 68 men. And so, the 9.1
00:29:05 9 percent for women is higher than the 5.9, but it is not
00:29:09 10 statistically significantly higher. So there's, you
00:29:12 11 know, from the statistician point of view, those data do
00:29:17 12 not provide evidence that gender was related to or
00:29:21 13 significantly at least related to the reversal of the
00:29:26 14 college's recommendation.

00:29:29 15 Q. So that was for the -- when the college committee
00:29:31 16 recommends for tenure. What about when they recommend
00:29:34 17 against tenure?

00:29:35 18 A. When they recommend against tenure, it doesn't
00:29:37 19 happen as often, but the university also doesn't always
00:29:40 20 take that recommendation. So you can see there -- all
00:29:43 21 the rows are the same because, you know, Dr. Nikolova
00:29:48 22 didn't affect this column. She was recommended and, in
00:29:51 23 fact, all the decisions after -- her case and after also
00:29:55 24 don't affect it. It's a grand total of nine that were
00:29:58 25 -- where the college committee recommended against,

00:30:01 1 three women and six men, and of those three women, the
00:30:06 2 university reversed it and granted tenure in two of the
00:30:09 3 three cases. And for the six men, it also granted
00:30:13 4 tenure in two of the six cases. So the percentages are
00:30:15 5 66 and 33, two thirds and one third. But again, this is
00:30:20 6 back to your question earlier, it's such a small sample.
00:30:24 7 We only have nine cases. We just don't have an
00:30:26 8 ability -- even though 33 and 66 look like they're a
00:30:29 9 long way apart, you know, it's just really, you know,
00:30:31 10 one or two people. So it's still not statistically
00:30:34 11 significantly different.

00:30:37 12 So the bottom line on this whole table is, there
00:30:40 13 is no statistical evidence for a relationship between
00:30:44 14 gender and the tenure decision given the department
00:30:48 15 and/or the college's recommendation.

00:30:50 16 Q. And why did you even look at the college and
00:30:55 17 department committees at all?

00:30:57 18 A. Well, this is playing off of Dr. Thompson's
00:31:01 19 table, you know, his tables 2 and 3 were about votes at
00:31:06 20 these committees, right? And so, you know, she was
00:31:11 21 recommended by her department and she was recommended by
00:31:14 22 the college but ultimately didn't get it, so, you know,
00:31:16 23 we want to see if that is gender related. I was doing
00:31:23 24 the gender comparison that Dr. Thompson did not do.

00:31:28 25 Q. Well, let's go, then, to your third chart or your

00:31:31 1 third table. What does this reflect?

00:31:35 2 A. It's a little bit broader. It's just looking at
00:31:41 3 the tenure decision. Ignores -- as you suggested,
00:31:44 4 ignores whether the department or the college
00:31:47 5 recommended or not. It's just asking bottom line: What
00:31:49 6 fraction of women get tenure? What fraction of men get
00:31:52 7 tenure? And so, does it -- this is now the groups are
00:31:56 8 going across the page. The first comparison there is,
00:31:58 9 again, prior to Dr. Nikolova's case. There were 21
00:32:02 10 women considered, 18 tenured. There were 66 men
00:32:07 11 considered, 56 tenured. And those two percentages are
00:32:11 12 very, very close. 85.7 for women and 84.6 percent for
00:32:16 13 men are the percentages granted tenure. The women
00:32:19 14 slightly bigger than the men but, again, no statistical
00:32:21 15 difference.

00:32:23 16 Q. And then, the next column.

00:32:25 17 A. The next column includes all the decisions,
00:32:29 18 excluding Dr. Nikolova, consistent with the way I'd
00:32:34 19 broken it down before, 22 of 25 women are -- extends to
00:32:38 20 the full-time period, 22 of 25 women were granted
00:32:41 21 tenure; that's 88 percent. Sixty-six of 76 men granted
00:32:45 22 tenure; that's 86.8 percent. Again, very similar
00:32:49 23 numbers. No statistical difference.

00:32:52 24 And then, the last one includes Dr. Nikolova so
00:32:55 25 the number of women considered goes up -- you've gotta

00:33:00 1 scoot it over a little bit more. There we go. The
00:33:04 2 number of -- okay. All decisions, this is the third
00:33:08 3 column. The number of women considered there, the 26 is
00:33:11 4 one more than the 25. That's Dr. Nikolova. And so, 22
00:33:15 5 out of 26 is 84.6 percent. And the 66 out of 76 for men
00:33:20 6 is 86.8 percent.

00:33:22 7 So again, now the women's number is slightly
00:33:25 8 lower than the men's, but there's a not a statistical
00:33:27 9 difference between those two. You know, the data don't
00:33:30 10 support a conclusion that gender is related to the
00:33:35 11 granting of tenure.

00:33:36 12 Q. And what about this last column, all decisions
00:33:40 13 plus those who left prior to tenure review?

00:33:43 14 A. Yeah. This looks a little bit broader because --
00:33:46 15 you know, I haven't seen any of the testimony, really,
00:33:48 16 other than the experts, but there's universities
00:33:52 17 typically have a thing, a third-year review. And also,
00:33:54 18 as you're working through tenure, you can be -- it can
00:33:59 19 be suggested that maybe you should find someplace else
00:34:02 20 to teach.

00:34:03 21 So to the extent that women were encouraged or --
00:34:08 22 to leave or were told at the third-year review, it's not
00:34:11 23 going well and they left, the tenure numbers could look
00:34:13 24 good for women because all the ones who weren't going to
00:34:15 25 get tenure left earlier. So this puts everybody in the

00:34:18 1 pot who comes in the door as an assistant professor and
00:34:21 2 says when you start out as an assistant, I want to know
00:34:23 3 what happens to you. You either get tenure or you
00:34:25 4 don't.

00:34:26 5 Some of the ones who don't left before they were
00:34:28 6 denied. Some of the ones who don't were denied. But
00:34:31 7 it's a broader comparison and would not be affected by
00:34:35 8 any differential decisions to leave early or being
00:34:39 9 encouraged to leave early. And so, in that case, you
00:34:41 10 know, it's a little more expanded pool, right? There's
00:34:44 11 30 total women, 90 total men, exactly three to one.
00:34:48 12 And the percentage ultimately tenured, whether they were
00:34:50 13 -- the ones who weren't tenured were, again, they denied
00:34:53 14 or left is 22 women and 66 men. That's also exactly
00:34:58 15 three to one.

00:34:58 16 So in this particular case, and this includes Dr.
00:35:02 17 Nikolova, the percentages are identical, the fraction of
00:35:06 18 women and the fraction of men who came in the door as
00:35:08 19 assistant professors in this time period, the same
00:35:12 20 percentages were ultimately granted tenure by the
00:35:16 21 University of Texas.

00:35:28 22 Q. Anything else you want to tell us about table 3
00:35:32 23 before I move on?

00:35:33 24 A. No.

00:35:33 25 Q. Okay. All right. Now, I think we've moved on

00:35:39 1 from Dr. Thompson now to address Dr. Glass' testimony,
00:35:44 2 and we already talked a little bit about this. But what
00:35:47 3 did you do in computing her -- Dr. Nikolova's damages
00:35:52 4 model?

00:35:54 5 A. Again, Dr. Glass had three scenarios. I
00:35:59 6 basically took his first scenario and did it somewhat
00:36:03 7 differently. That's the one where she -- instead of
00:36:06 8 getting tenure in September -- effective September 1,
00:36:09 9 2019 her, tenure would be -- becomes effective September
00:36:13 10 1st, 2023. So, you know, year and a half from now. And
00:36:17 11 that she works until about age 65 and so, that's -- I
00:36:25 12 took his scenario one and I -- you'll notice there for
00:36:28 13 the row with the base case if you can sort of highlight
00:36:31 14 that up under expected future salaries near the top.
00:36:50 15 The data at the top says denied tenure September 1st,
00:36:54 16 '19. Alternative assumption date of tenure is going to
00:36:57 17 be 9-1-2023. I adopted the same assumption as Dr. Glass
00:37:02 18 for the employee contribution to retirement
00:37:05 19 seven-and-a-half percent. So now, the base case had she
00:37:08 20 been tenured September 1st, 2019, I have her with a
00:37:13 21 salary of 129,500. And then, I have her salary in that
00:37:20 22 case that would have -- by September 1st of 2023, I have
00:37:24 23 that her salary would have grown to 149,314 by September
00:37:31 24 1st of 2023, had she received tenure in September of
00:37:35 25 '19.

00:37:36 1 And Dr. Glass used a number of 130,500. I used a
00:37:41 2 thousand dollars less than that. His number actually
00:37:44 3 comes from the salary of a particular faculty member
00:37:47 4 promoted at that particular time. I think it's a Dr.
00:37:51 5 Tiwari. And if you look, the increase that Dr. Nikolova
00:37:55 6 would have received to get to the 129,5 would have been,
00:38:00 7 as I note two rows below, 16.35 percent, which is larger
00:38:04 8 than every other promotional increase we see in the data
00:38:07 9 from the Cockrell School of Engineering, except for one.
00:38:09 10 Most of the promotional increases are around 10, 11
00:38:13 11 percent.

00:38:13 12 Q. So just to be clear, you looked at multiple
00:38:16 13 professors who were promoted from assistant to associate
00:38:19 14 and looked at how much a percentage increase they
00:38:22 15 experienced.

00:38:22 16 A. Yes. And as I said, most of the time, that was
00:38:25 17 between -- close to 12 percent. Between 10 and 12
00:38:27 18 percent and -- but I looked, you know, Professor Tiwari
00:38:32 19 made about \$4,000 more than Nikolova in 2018, and if you
00:38:38 20 looked in, you know, the lack of escalator, the data we
00:38:41 21 were looking at a minute ago, you could see that there
00:38:43 22 was a tendency to get pretty close to people's pay that
00:38:48 23 were all promoted at the same time. We didn't focus on
00:38:50 24 that, but it's also in those data.

00:38:52 25 So I saw several other cases or at least a couple

00:38:55 1 of other cases where people promoted the same year who
00:38:57 2 were paid differently as assistants made within a
00:39:00 3 thousand dollars of each other as associates, but didn't
00:39:03 4 make exactly the same. So that's what I did for Dr.
00:39:05 5 Nikolova. I assumed it would get to 129,5, within a
00:39:09 6 thousand dollars of Professor Tiwari. So that's where
00:39:11 7 the 129,5 comes, and I note that it's a 16.35 percent
00:39:15 8 increase over her prior year salary, which, as I said,
00:39:19 9 is larger than every other promotional increase in those
00:39:22 10 data, except for one.

00:39:23 11 Q. So you're doing a similar elevator but the gap
00:39:27 12 starts out pretty small, and then, it closes over a
00:39:30 13 period of time or how would you --

00:39:31 14 A. Well, I wouldn't do that. I would say -- so I
00:39:36 15 assume that had she gotten tenure, it was 129,5. That's
00:39:39 16 what she would have had when she was tenured. The row
00:39:42 17 right below that is, she didn't get tenure, so her
00:39:45 18 salary was actually 114,639 that it, in fact, was.
00:39:49 19 Okay. And now, I think what we want to do is, we can
00:39:53 20 switch to the bottom so we can look at it year by year
00:39:56 21 so there -- so the first row there September 1st, '19,
00:40:03 22 that's the 129,5 had she received tenure. And her
00:40:08 23 actual salary, given she did not receive tenure,
00:40:11 24 114,639. And then, that year, virtually everyone in
00:40:17 25 school got a zero percent increase. That was, I think,

00:40:20 1 COVID issues and all. Also, that was a raise pull that
00:40:25 2 year, folks. There wasn't one essentially.

00:40:25 3 Q. There wasn't an estimate. At this point, you're
00:40:27 4 looking at the actual data.

00:40:28 5 A. I'm looking at the actual data under scenario
00:40:31 6 one, yes. Her actual salary was, again, the same the
00:40:34 7 next year as virtually everyone's in the college was.
00:40:36 8 And so, in the "but for" case, had she been tenured and
00:40:40 9 moved to 129,5, I assumed, well, you know, again, you
00:40:43 10 would not have gotten an increase -- she would not have
00:40:45 11 gotten an increase that year.

00:40:47 12 And then, for each of the subsequent years, the
00:40:51 13 growth and the base case is 4.86 percent, and that's
00:40:55 14 actually higher than Dr. Glass assumed, but that's the
00:40:58 15 average within rank increase in the data that you and I
00:41:01 16 looked at a minute ago. And so, the average annual
00:41:05 17 increase -- not counting the 19200. That would have
00:41:08 18 pulled it down. But in the other years, it was about a
00:41:10 19 4.86 percent increase. So I said that's about on
00:41:13 20 coverage how your salary goes up when you don't get a
00:41:16 21 promotion.

00:41:16 22 And so, that's what we're doing until, you
00:41:20 23 know, you can see few rows down for September 1st, 2023,
00:41:27 24 so there, Dr. Nikolova gets about a \$20,000 increase,
00:41:32 25 okay, from 126 to 146. That's the promotion in this --

00:41:37 1 in the new world. The assumption is, she will be -- or
00:41:40 2 these calculations are made assuming that she receives
00:41:43 3 tenure and promoted to associate professor September 1st
00:41:47 4 of 2023. And that's back to that 16.35 percent
00:41:51 5 increase. So I used the same percentage increase that I
00:41:53 6 had used before.

00:41:54 7 And then, you'll note, you can see it right
00:41:57 8 at the top of the page there, it says catch-up growth.
00:42:01 9 So the top of the screen. I'm sorry. It was there.
00:42:11 10 See where it says within rank row 4.86 percent and then,
00:42:15 11 catch-up growth, .63 percent. That is the amount of
00:42:21 12 growth that I assume she experiences over the 24 -- over
00:42:26 13 the subsequent three years to catch her up to where she
00:42:29 14 would have been.

00:42:30 15 So if you look at the last row on the table
00:42:32 16 at the bottom, September 1st of 2026, I have her earning
00:42:38 17 172,159. If she had received tenure back in '19 and I
00:42:43 18 have also have her catching up to that same spot if she
00:42:48 19 receives tenure in 2023. And so, part of the reason for
00:42:53 20 my assuming the catch-up is, as you said, if you look in
00:42:57 21 the data, it's not an escalator-type world. It's also
00:43:01 22 the case that there's a substantial amount of data.

00:43:05 23 And this was what I cited in my report from
00:43:08 24 the Bureau of Labor Statistics. Every two years, they
00:43:12 25 survey what's called displaced workers, people who have

00:43:15 1 lost a job, and they look at whether those people are
00:43:18 2 reemployed, and if they're reemployed, how much they're
00:43:20 3 earning relative to the job they left. And within three
00:43:24 4 years -- because the average is from one to three years.
00:43:27 5 Within three years, over half of the individuals who are
00:43:31 6 reemployed are now earning what they otherwise would
00:43:36 7 have earned on the job that they lost.

00:43:39 8 And so, there's evidence more generally
00:43:42 9 besides just U.T.'s faculty data that Dr. Nikolova would
00:43:46 10 be likely to catch up. And moreover, suppose Dr.
00:43:54 11 Nikolova got fed up with U.T. and left. Go to another
00:43:57 12 university, get tenure there, get paid in a very similar
00:44:01 13 way, one would think. So, you know, there is a market
00:44:06 14 there. People do leave universities and go to other
00:44:09 15 universities and so --

00:44:11 16 MR. NOTZON: Objection, your Honor. This is
00:44:12 17 well beyond his expertise. He didn't cite it in his
00:44:16 18 report. There's no scientific basis for it.

00:44:18 19 THE COURT: It's not in his report?

00:44:20 20 MR. DOWER: I'm not sure off the top of my
00:44:22 21 head, your Honor. If it's just --

00:44:23 22 THE WITNESS: Not really.

00:44:24 23 MR. DOWER: Okay. Well, then, we'll --

00:44:26 24 THE WITNESS: Sorry.

00:44:27 25 THE COURT: It's okay.

00:44:29 1 Q. (BY MR. DOWER) Okay. Anything more that you'd
00:44:37 2 like to -- well, actually, we should probably talk a
00:44:39 3 little bit about some of these other columns. So can
00:44:42 4 you just explain like what does the loss column reflect?

00:44:46 5 A. The loss is the difference between the base case
00:44:48 6 and the scenario. So that represents the amount of
00:44:51 7 money that Dr. Nikolova would have earned had she -- or
00:44:55 8 the estimated amount of money she would have earned had
00:44:57 9 she received tenure in '19, compared to now receiving it
00:45:00 10 in 2023.

00:45:01 11 Q. Is this for the year in which it appears in the
00:45:05 12 row?

00:45:05 13 A. Yes. So in that -- for the year starting 9-1-19,
00:45:11 14 it was a little under 15,000. Exactly the same next
00:45:16 15 year because no raises were given anywhere. And then, a
00:45:18 16 little bit larger and a little bit larger and it drops
00:45:20 17 down and then, shrinks to zero.

00:45:22 18 Q. And why does it drop so dramatically?

00:45:24 19 A. Well, it drops so dramatically September 1st,
00:45:28 20 2023 because that's the assumption as Dr. Glass made
00:45:34 21 that she receives tenure at that point and is promoted
00:45:36 22 to associate professor.

00:45:40 23 Q. Real quick, going back up, this says date of
00:45:43 24 tenure denial September 1st, 2019, but we've heard
00:45:47 25 testimony that the decision was made in February. Why

00:45:50 1 use September 1st?

00:45:50 2 A. That's when it would have taken effect. So the
00:45:55 3 date at which the deny tenure would have been effective
00:45:58 4 is probably a better way to say that.

00:46:00 5 Q. And so, I noticed your total loss is the sum of
00:46:04 6 loss in retirement contribution. What does that mean?

00:46:07 7 A. Well, the retirement contribution is that
00:46:09 8 seven-and-a-half percent because the University of Texas
00:46:13 9 faculty have a -- they actually have one of two. They
00:46:17 10 have a retirement system that the university contributes
00:46:19 11 to and Dr. Glass' assumption that I adopt it was that
00:46:24 12 seven-and-a-half percent. So the loss --
00:46:26 13 seven-and-a-half percent of the loss column is put in
00:46:29 14 the retirement contribution column. So that's also a
00:46:32 15 loss. And then, adding those two together, the loss and
00:46:35 16 the lost retirement contribution is -- gives the total
00:46:39 17 loss in dollars for each of the years.

00:46:42 18 Q. So you're not shortchanging her the retirement
00:46:44 19 stuff.

00:46:45 20 A. No.

00:46:46 21 Q. And what about the discount factor? What's that?

00:46:50 22 A. Well, that is very similar to what Dr. Glass
00:46:54 23 talked about is, you know, \$100,000 or any amount of
00:46:57 24 money in a couple of years is not worth the same as the
00:47:00 25 amount of money now because there are interest rates.

00:47:03 1 As he explained quite well, if you want somebody to have
00:47:06 2 100,000 in five years, you give them something less than
00:47:08 3 that, they invest it, it grows at the interest rate, in
00:47:12 4 five years, they've got \$100,000.

00:47:14 5 So when you're calculating what it's worth today
00:47:18 6 of what money in the -- for those payments that she's
00:47:20 7 going to miss in the future, you do the reverse of that.
00:47:23 8 You sort of pull it -- you shrink it by how much the
00:47:27 9 interest is that would have been earned, and that's what
00:47:28 10 the discount factor is. It's based on interest rates
00:47:32 11 and, you know, those discount factors are based on --
00:47:38 12 they're actually -- there's a market for what's called
00:47:42 13 strip securities from the U.S. Treasury.

00:47:44 14 You can take a treasury bond with interest coupon
00:47:46 15 payments, physically strip those two apart, and you can
00:47:50 16 -- essentially there's a market for -- I want to have
00:47:53 17 \$10,000 paid to me in November of 2024, well, there's a
00:47:56 18 market for that. And whatever the price is for \$10,000
00:47:59 19 in November 2024, you say okay, that's what we're going
00:48:02 20 to count as \$10,000 is worth today.

00:48:04 21 So my discount factors are based on the market
00:48:08 22 prices at the time I wrote my report for moneys in the
00:48:13 23 future effectively.

00:48:15 24 Q. And so, your total lost compensation, can you
00:48:21 25 just sort of summarize, what does that reflect?

00:48:23 1 A. Well, that takes the yearly losses in the fourth
00:48:27 2 column, the first red column, adds to them the lost
00:48:30 3 retirement contribution, takes the total loss,
00:48:34 4 multiplies those by the discount factor to take -- bring
00:48:37 5 those to present value. So effectively, that's going to
00:48:39 6 take moneys in the future and shrink them a little bit.
00:48:43 7 And then, it's going to add all -- the present value of
00:48:47 8 all those annual losses and that gives a total loss of
00:48:51 9 just over \$72,000.

00:48:52 10 Q. So this is -- so this is your estimate of the
00:48:57 11 lost compensation given this scenario and then, how much
00:49:02 12 that would be worth if she were to get the money today
00:49:06 13 effectively.

00:49:06 14 A. Yes.

00:49:24 15 Q. Do you have any other comments or response to Dr.
00:49:27 16 Glass' scenario one?

00:49:30 17 A. No.

00:49:31 18 Q. Okay. Well, so we don't have a chart for it, but
00:49:35 19 for Dr. Glass' scenario two, do you believe that --

00:49:39 20 A. I'm sorry. Can I change my answer?

00:49:41 21 Q. Sure.

00:49:42 22 A. Because remember Dr. Glass' scenario one and two
00:49:46 23 sub-scenarios to 65 and to 70. For -- there's catchup,
00:49:51 24 it's not going to matter. But in his assumption where,
00:49:54 25 you know, you're on an escalator and you never catch up,

00:49:58 1 it matters -- as you could see, it matters whether you
00:50:00 2 take it to 65 or you take it to 70. And I hope I am as
00:50:04 3 in as good a shape as he is when I'm his age, but most
00:50:07 4 people don't work to 70, not even necessarily most
00:50:11 5 faculty. There are tables from -- as he cites in his
00:50:13 6 report that calculate expected remaining work life by
00:50:16 7 education and age and gender, and that is, as he
00:50:20 8 reports, 65 or 65 and change years for Dr. Nikolova.

00:50:25 9 So I don't -- even if you believe that there was
00:50:28 10 the escalator problem that there's a gap that's going to
00:50:31 11 last forever, I think it would stop at age 65, not at
00:50:35 12 age 70.

00:50:35 13 Q. If Dr. Nikolova said that she wants to work to
00:50:38 14 70, does that change that opinion at all?

00:50:41 15 A. No. I don't think so. I mean, I understand --

00:50:43 16 Q. Why not?

00:50:44 17 A. I understand and people say things. And one of
00:50:46 18 the aspects -- it's just based on statistics and life
00:50:49 19 spans and what the observed behavior of people of those
00:50:54 20 ages and those education levels and those genders, so
00:50:57 21 it's a population average. Doesn't mean she couldn't,
00:50:59 22 but it means that, you know, sort of the likely or
00:51:02 23 expected outcomes is 65 years.

00:51:05 24 Q. Anything about -- anything else about scenario
00:51:10 25 one?

00:51:10 1 A. No.

00:51:10 2 Q. Okay. If you change your answer again, just let
00:51:14 3 me know. So scenario two for Dr. Glass was that Dr.
00:51:20 4 Nikolova continues in a nontenured position at U.T.
00:51:23 5 Austin. Do you have an opinion about whether Dr. Glass
00:51:26 6 understates or overstates Dr. Nikolova's earning losses
00:51:30 7 in that scenario?

00:51:31 8 A. Well, I think he understates them. I mean, as he
00:51:34 9 admitted, you know, she couldn't stay in an untenured
00:51:37 10 position at U.T. That's against the rules. But she
00:51:40 11 could move on somewhere else. Well, if she's going to
00:51:42 12 move on somewhere else, you know, if you're worthy of
00:51:45 13 tenure at U.T., you can certainly -- that's a really
00:51:47 14 good school. You're worthy of tenure in a lot of place.
00:51:50 15 She would move on presumably --

00:51:50 16 MR. NOTZON: Objection. Your Honor, again,
00:51:53 17 opining as a labor expert and that's not what he's here
00:51:57 18 to do.

00:51:57 19 THE COURT: Is that in your report, by any
00:51:58 20 chance, Doctor?

00:52:00 21 THE WITNESS: I made some reference to it.
00:52:05 22 I just stand by the -- sorry.

00:52:08 23 MR. DOWER: I thought it was in his report,
00:52:10 24 but I could be wrong.

00:52:11 25 MR. NOTZON: Whether it's in his report or

00:52:12 1 not, he's not a labor expert. He has no evidence or
00:52:17 2 expertise and the employability of a professor at
00:52:21 3 another university.

00:52:22 4 MR. DOWER: I tendered him as an expert in
00:52:23 5 labor economics and didn't get an objection.

00:52:26 6 MR. NOTZON: Economics, but not whether or
00:52:28 7 not employability at another university --

00:52:30 8 THE COURT: Okay. Since it's disputed as to
00:52:32 9 whether it's in the report, let's just move beyond.

00:52:35 10 Q. (BY MR. DOWER) Okay. To the best of your
00:52:38 11 recollection, is there anything that's contained in your
00:52:40 12 report about Dr. Glass' scenario two that you'd like to
00:52:45 13 explain to the jury? If you want to refresh your
00:52:48 14 recollection, I can hand you a copy of your report.

00:52:51 15 A. Sure. I would just read the sentence from my
00:53:35 16 report, if I may. Under Dr. Glass' scenario two,
00:53:41 17 further, even if Dr. Nikolova could continue at U.T.
00:53:43 18 Austin after being denied tenure in 2023, it seems
00:53:46 19 likely that her earnings could be higher from a tenured
00:53:49 20 position at another university than from a nontenured
00:53:51 21 position at U.T. Austin.

00:53:55 22 MR. NOTZON: Your Honor, my objection stands
00:53:57 23 as to the employability and the likelihood. He makes
00:54:03 24 the assumption that she goes and gets another job based
00:54:07 25 -- and I'll cross him on the fact that there's no

00:54:09 1 evidence behind that. That's fine. But not to testify
00:54:12 2 about that likelihood or the ease with which she can be
00:54:16 3 reemployed.

00:54:18 4 MR. DOWER: I think this sentence that's in
00:54:21 5 the report is what his testimony is.

00:54:23 6 THE COURT: As long as he's sticking to his
00:54:25 7 report, you'll have the opportunity to cross-examine him
00:54:27 8 on whatever he's saying.

00:54:29 9 MR. NOTZON: Thank you, your Honor.

00:54:30 10 Q. (BY MR. DOWER) Finally, Dr. Deere, to the extent
00:54:38 11 it's in the report, do you have any response to Dr.
00:54:43 12 Glass' scenario three in which Dr. Nikolova leaves U.T.
00:54:46 13 Austin on August 31st, 2023 and then, just has zero
00:54:51 14 income thereafter?

00:54:53 15 A. I just note that Dr. Glass admits that that was,
00:54:57 16 quote, an unlikely, unquote, scenario.

00:55:02 17 Q. Pass the witness.

00:55:09 18 CROSS-EXAMINATION

00:55:09 19 BY MR. NOTZON:

00:55:10 20 Q. Good afternoon, Dr. Deere.

00:55:12 21 A. Hi.

00:55:13 22 Q. So I take it from your report this is only the
00:55:16 23 third case you've been working in the last four years?

00:55:19 24 A. No.

00:55:20 25 Q. Well, you only list two other cases in your

00:55:24 1 appendix.

00:55:24 2 A. That's testimony, right?

00:55:26 3 Q. Okay. And which party did you work for in those
00:55:31 4 two cases? You didn't list that. Did you work for the
00:55:35 5 plaintiff or the defendant?

00:55:37 6 A. In the AJP Oil Company case, I worked for the
00:55:41 7 plaintiff. In the state of Texas case, I worked for the
00:55:43 8 defense.

00:55:44 9 Q. Okay. And the --

00:55:46 10 A. No, no, no. Actually, I'm sorry, I worked for
00:55:48 11 the state of Texas. So plaintiffs in both cases.

00:55:50 12 Q. Okay. And neither those were employment cases?

00:55:57 13 A. That is correct.

00:55:58 14 Q. Okay. And you've been doing this for how long,
00:56:03 15 testifying as an expert in court?

00:56:07 16 A. Well.

00:56:09 17 Q. Fifteen years?

00:56:10 18 A. The first testimony, yeah, 15 or so years ago.
00:56:14 19 I've worked in -- you know, in this doing the consulting
00:56:16 20 work for like 31. But probably the first time I
00:56:21 21 testified would have been, I don't know, around 2005.
00:56:24 22 That's probably reasonable, 2007.

00:56:26 23 Q. And you heard Dr. Glass has been doing this for
00:56:29 24 over 40 years?

00:56:30 25 A. Yes.

00:56:30 1 Q. And on the -- sticking with Glass and then, we'll
00:56:36 2 go back to Dr. Thompson. Isn't it true, you don't have
00:56:41 3 any evidence of how reemployable Dr. Nikolova would be
00:56:45 4 in another university, correct?

00:56:47 5 A. Well, she changed universities once already,
00:56:49 6 right?

00:56:51 7 Q. Sir, you don't have any evidence, any scientific
00:56:54 8 evidence, any literature that you use to be able to
00:56:58 9 testify about the likelihood of her reemployability in
00:57:01 10 her current circumstances, do you?

00:57:04 11 A. No.

00:57:09 12 Q. And the unemployed data that you refer to
00:57:11 13 differs, depending on the field of the employment,
00:57:15 14 correct?

00:57:18 15 A. I'm not --

00:57:19 16 Q. The labor statistics you talked about?

00:57:21 17 A. Well --

00:57:22 18 Q. About the people that are unemployed and when
00:57:24 19 they get reemployed?

00:57:25 20 A. That covers the workforce -- all the workforce.
00:57:29 21 So that includes people who are doing quite different
00:57:32 22 things, yes.

00:57:32 23 Q. Okay. So it's an aggregate one number?

00:57:35 24 A. Yes.

00:57:36 25 Q. Okay. So there may be differences for university

00:57:41 1 professors?

00:57:43 2 A. Certainly could be. Yes.

00:57:44 3 Q. And your catchup growth assumption there is -- is
00:57:48 4 there any scientific or economic basis?

00:57:53 5 A. Well, I would think that --

00:57:54 6 Q. Or is it an arbitrary number?

00:57:57 7 A. Well, three years is from the Department of Labor
00:58:02 8 Statistics.

00:58:03 9 Q. The catchup?

00:58:04 10 A. Period of the catchup. I split the growth
00:58:06 11 equally over the three years.

00:58:08 12 Q. Okay.

00:58:10 13 A. And I would also point to the -- you know, the
00:58:12 14 data in college that showed people, you know, aren't
00:58:16 15 stuck on an escalator.

00:58:17 16 Q. Okay.

00:58:18 17 A. Necessarily.

00:58:19 18 Q. Yeah, that's -- that data you looked at that you
00:58:22 19 said kind of the helicopter scenario or the
00:58:25 20 anti-escalator evidence, that's anecdotal, right?
00:58:30 21 That's you just kind of looked around, but you didn't
00:58:32 22 actually do a numerical study or a statistical study of
00:58:35 23 the salaries at U.T., correct?

00:58:39 24 A. The stuff we did online here, yes. It was just
00:58:43 25 picking up some examples. That's true.

00:58:45 1 Q. All right. And moving on to Dr. Thompson. Isn't
00:59:02 2 it true that the process for early tenure review that
00:59:10 3 you discussed, you criticized Dr. Thompson because the
00:59:14 4 decision to go up early was in part the faculty
00:59:19 5 member's. Do you recall that criticism in your report?

00:59:22 6 A. Yes.

00:59:23 7 Q. Okay. And you had access to Professor Tewfik's
00:59:27 8 deposition as part of your review in your report.

00:59:30 9 A. I think so. Yes.

00:59:31 10 Q. And were you here for the testimony of Professor
00:59:35 11 Tewfik or --

00:59:36 12 A. No.

00:59:36 13 Q. Dr. Fenves?

00:59:37 14 A. No.

00:59:38 15 Q. Okay. Well, were you aware that Professor Tewfik
00:59:43 16 in his deposition testified that to go upwardly --

00:59:47 17 MR. DOWER: I'm going to object to the
00:59:49 18 hearsay and assume facts not in evidence. That
00:59:51 19 deposition transcript is not in evidence.

00:59:52 20 MR. NOTZON: I'm questioning him on what he
00:59:54 21 relied on as he reported in his report. That he has
00:59:57 22 that deposition.

00:59:59 23 THE COURT: You can ask the question.

01:00:00 24 MR. NOTZON: Thank you.

01:00:02 25 Q. (BY MR. NOTZON) And Professor Tewfik, at page 77,

01:00:08 1 line 4 to 78, line 5, says that the basis for going
01:00:15 2 forward has to be with the approval of the budget
01:00:19 3 council of the department. Are you aware of that?

01:00:22 4 A. I don't doubt it.

01:00:23 5 Q. Okay. Well, so the employee can want all they
01:00:28 6 want, but the gatekeeper is the budget council, correct?

01:00:31 7 A. That sounds right. I mean, I presume.

01:00:34 8 Q. So your criticism of Dr. Thompson, you can't say
01:00:39 9 that this is a different disparate treatment because the
01:00:42 10 faculty member has to choose. Well, that eliminates the
01:00:47 11 fact that the gatekeeper's actually the budget council,
01:00:51 12 correct?

01:00:52 13 A. I would think a faculty member could, one, ask to
01:00:58 14 be and another one, a faculty member could probably ask
01:01:00 15 not to be --

01:01:00 16 Q. That's true --

01:01:03 17 A. -- and that might keep the gatekeeper from going
01:01:05 18 forward.

01:01:06 19 Q. That's true.

01:01:06 20 A. To that's kind of what I meant.

01:01:08 21 Q. And there could be a disparate impact on the
01:01:10 22 women in that scenario, and the numbers that Dr.
01:01:15 23 Thompson talked about discuss that. Let me ask a
01:01:18 24 followup question.

01:01:19 25 You say that Dr. Thompson has not presented

01:01:22 1 this jury any evidence that assures them that gender was
01:01:30 2 a factor in this case, correct?

01:01:32 3 A. I didn't say it like that. I said that gender
01:01:35 4 was related to the tenure decision.

01:01:36 5 Q. And you also are not presenting any evidence to
01:01:39 6 this jury that gender wasn't, correct?

01:01:46 7 A. I'm not sure how you would do that, so no.

01:01:49 8 Q. You would agree with me?

01:01:51 9 A. I just said no. I'm not presenting that kind of
01:01:53 10 evidence.

01:01:53 11 Q. And do you understand that Dr. Nikolova is not
01:02:01 12 saying that she was denied the ability to go up early
01:02:07 13 and she's not saying that she was -- that all women are
01:02:10 14 denied the ability to go up early. They're just having
01:02:12 15 a different experience and they're retarded -- the way
01:02:16 16 that her allegation is that women are retarded in their
01:02:21 17 likelihood of going up early and then, when they go up
01:02:24 18 early, they have a worse experience than the men.

01:02:27 19 So the granularity of that allegation is
01:02:35 20 important in her claims. Do you understand that?

01:02:36 21 A. I don't. I don't recollect that granularity from
01:02:42 22 the complaint. I just remember the complaint saying
01:02:44 23 that it was, you know, denied tenure on the basis of
01:02:46 24 gender and pregnancy.

01:02:48 25 Q. But your analysis discounts that and lumps her in

01:02:53 1 with all women that went up for tenure and say, look at
01:02:58 2 this, it's just the general numbers without relevance to
01:03:01 3 her specific experience in making it similarly situated
01:03:06 4 to her and what she experienced. Do you see that?

01:03:12 5 A. All of the women who were assistant professors
01:03:15 6 and all the men who were assistant professors and went
01:03:17 7 up to tenure are in the analysis I looked at.

01:03:20 8 Q. Do you also understand that when you equate, when
01:03:24 9 you say everybody that's recommended for tenure, that
01:03:27 10 means every vote that's 51 percent or more, 51 to 100
01:03:32 11 percent are lumped in together so that you eliminate the
01:03:37 12 value of the relative vote difference, a weak vote
01:03:41 13 versus a strong vote. You eliminate that in your
01:03:45 14 analysis. Do you understand that?

01:03:45 15 A. Well, I mean.

01:03:46 16 Q. Yes or no?

01:03:48 17 A. No.

01:03:49 18 Q. Okay. And you kept saying this is not
01:03:57 19 statistically important or this is not statistically
01:04:00 20 significant, but you actually didn't do any
01:04:03 21 statistically significance tests.

01:04:05 22 A. Yes, I did.

01:04:07 23 Q. Where are your -- you didn't do any regressions.
01:04:10 24 You didn't -- you just did simple percentages, correct?

01:04:16 25 A. No.

01:04:16 1 Q. In your table 2?

01:04:40 2 A. One sentence in here: Again, none of the
01:04:42 3 differences are statistically significant. So I made a
01:04:45 4 statistical significance test.

01:04:48 5 Q. How did you do that test?

01:04:50 6 A. I did a two-by-two comparison with the Fisher's
01:04:54 7 exact test.

01:04:55 8 Q. And what's your R squared on that?

01:04:57 9 A. R squared is irrelevant to that test. R square's
01:05:00 10 from a regression. This isn't a regression context.

01:05:03 11 Q. And so, what level significance are you -- did
01:05:06 12 you calculate?

01:05:07 13 A. Well, the cutoff for statistical significance is
01:05:11 14 five percent. These numbers are well above five
01:05:13 15 percent. I don't recall what they were, but they were
01:05:16 16 nowhere near five percent. They need to be below five
01:05:20 17 percent for statistical significance.

01:05:21 18 Q. But at the end of the day, you have nothing that
01:05:30 19 removes the implication of Dr. Thompson's report that no
01:05:38 20 one had the same experience that Dr. Nikolova had at the
01:05:42 21 University of Texas in the statistical analysis that he
01:05:47 22 provided, correct?

01:05:48 23 A. I think that's correct. Her experience was
01:05:50 24 unique. Not shared by others over gender either.

01:05:56 25 Q. And you understand she's also claiming pregnancy

01:06:00 1 and not just gender.

01:06:01 2 A. Yes. There were other pregnant women, as well.
01:06:05 3 Right.

01:06:05 4 Q. You didn't account for that in your statistic,
01:06:08 5 did you?

01:06:08 6 A. Dr. Thompson didn't do anything with that. I saw
01:06:10 7 no need to respond.

01:06:11 8 Q. That would be a no. You didn't do anything?

01:06:13 9 A. That would a no. Yes, sir.

01:06:15 10 Q. I'll pass the witness.

01:06:18 11 RE-DIRECT EXAMINATION

01:06:18 12 BY MR. DOWER:

01:06:27 13 Q. Earlier, you testified about the effect that
01:06:32 14 small population sizes -- population in the statistical
01:06:36 15 sense has on statistical significance. Do you remember
01:06:40 16 testifying about that?

01:06:41 17 A. Yes.

01:06:42 18 Q. And so, if you look at candidates with a high
01:06:45 19 degree of granularity, what does that do to the number
01:06:48 20 of people you're looking at?

01:06:51 21 A. Well, it seems like you would be slicing the data
01:06:56 22 to a very small -- compartmentalizing into small pieces
01:07:01 23 that would be difficult to say much statistically.

01:07:04 24 Q. And if you look at it with the highest level of
01:07:10 25 granularity, wouldn't you be looking at the candidate's

01:07:12 1 credentials?

01:07:15 2 A. Yes.

01:07:17 3 Q. And so, does that just take us out of this data
01:07:19 4 altogether and back to their -- you know, an actual
01:07:23 5 comparison between the strengths of the dossiers?

01:07:26 6 MR. NOTZON: Objection, your Honor. This is
01:07:27 7 not part of his report. It's not statistical analysis.

01:07:31 8 MR. DOWER: It's in direct response to the
01:07:33 9 cross, your Honor.

01:07:33 10 THE COURT: I'll allow it.

01:07:35 11 A. Well, yeah. You'd still take account of who got
01:07:37 12 tenure and who didn't, and who was a woman and who
01:07:39 13 wasn't, and who took a leave, or who was pregnant, or
01:07:41 14 whatever, and who wasn't. So those facts wouldn't
01:07:45 15 change, but the data you would bring to explain them
01:07:46 16 would be a much richer set. It would include the tenure
01:07:50 17 dossiers, research records, grant funding, service
01:07:53 18 records, teaching records, and the like. Yeah.

01:07:56 19 Q. (BY MR. DOWER) Earlier, you were asked about
01:08:07 20 whether or not anyone else had the experience of Dr.
01:08:12 21 Nikolova in Dr. Thompson's data about the promotion and
01:08:15 22 tenure committee vote. Do you remember being asked
01:08:18 23 about that?

01:08:18 24 A. Yes.

01:08:18 25 Q. Was Dr. Nikolova uniquely a woman amongst all of

01:08:23 1 the population of data?

01:08:25 2 A. She was not the only woman. No.

01:08:26 3 Q. And was she uniquely pregnant amongst all the
01:08:31 4 population of data?

01:08:32 5 A. Not given the number of -- I don't really know
01:08:36 6 who was pregnant, but given the number of people what
01:08:38 7 had a probationary extension who were women.

01:08:40 8 Q. So just looking at Dr. Thompson's statistics, can
01:08:43 9 you infer anything one way or the other about whether
01:08:46 10 the thing that sets Dr. Nikolova apart is pregnancy or
01:08:50 11 gender as opposed to maybe a weakness in her
01:08:53 12 application?

01:08:55 13 A. No.

01:08:56 14 Q. Pass the witness.

01:08:58 15 RE-CROSS EXAMINATION

01:08:59 16 BY MR. NOTZON:

01:08:59 17 Q. And you can't say that it was the weakness of her
01:09:02 18 application either, can you?

01:09:03 19 A. No, I cannot.

01:09:05 20 THE COURT: Thank you, sir. You may step
01:09:06 21 down.

01:09:08 22 THE WITNESS: Thanks.

01:09:10 23 THE COURT: Next witness.

01:09:12 24 MR. DOWER: The witness can step down, your
01:09:14 25 Honor. We pass.

* * * * *

UNITED STATES DISTRICT COURT)
WESTERN DISTRICT OF TEXAS)

I, LILY I. REZNIK, Certified Realtime Reporter,
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